

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Petition for  
Penalty Relief of:

**RALPH NAPOLITANO, M.D.**

Physician's and Surgeon's  
Certificate No. G 69492

Petitioner.

File No. 26-2009-198235

**DECISION**

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

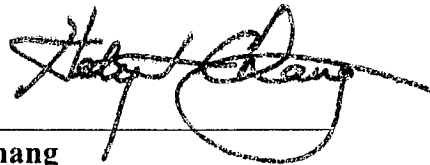
This Decision shall become effective at 5:00 p.m. on June 25, 2010.

IT IS SO ORDERED May 26, 2010.

MEDICAL BOARD OF CALIFORNIA

By: \_\_\_\_\_

**Hedy Chang**  
Chairperson, Panel B



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STATE OF CALIFORNIA

In the Matter of the Petition  
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RALPH NAPOLITANO, M.D.

Physician's and Surgeon's  
Certificate No. G 69492

Petitioner.

Case No. 2009120584

**PROPOSED DECISION**

Amy C. Lahr, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on April 1, 2010, in Los Angeles, California.

Respondent Ralph Napolitano represented himself. David E. Wood, Esq., of Anderson, Kill, Wood & Bender, assisted Respondent.

Colleen M. McGurrin, Deputy Attorney General, appeared pursuant to Government Code section 11522.

Petitioner filed a Petition for Penalty Relief (Petition), seeking early termination of probation. The Attorney General opposes the petition.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

**FACTUAL FINDINGS**

1. Respondent filed the Petition on March 31, 2010.
2. On August 13, 1990, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate number G69492 (certificate) to Petitioner.
3. On October 11, 2005, following a Stipulated Settlement and Disciplinary Order, the Board revoked Petitioner's certificate, for sexual misconduct with a patient and unprofessional conduct. The Board stayed the revocation and placed Petitioner on probation for seven years, on terms and conditions that included completion of an ethics course, a professional boundaries program, a psychiatric evaluation, psychotherapy, practice monitoring, a prohibition from solo practice, and a third-party chaperone present while consulting, examining or treating female patients.

4. The facts underlying the 2005 Accusation that led to Petitioner's current probationary status are that from July 2003 through September 2003, Petitioner engaged in inappropriate sexual relations with one of his patients. Specifically, Petitioner fondled and kissed patient M.S., who sought treatment from Petitioner for anxiety and depression, after she confided in him that she had been a victim of incest from age four through sixteen. M.S. reported that Petitioner first treated her in June 2003, at Pacific Oaks Medical Center. During this initial visit, M.S. told Petitioner about her history of incest, that she had trouble with relationships, and that she was depressed. She described this initial visit as "professional." M.S. reported to the Santa Barbara County Sheriff's Department that:

Approximately one month later, in July of 2003, [M.S.] had a follow-up visit with [Petitioner] at the Medical Center. During this visit, [Petitioner] asked how the medication was working and how her living situation was working out with her ex-boyfriend. [M.S.] also talked about her prospects; [i.e.,] people she might try having a relationship with. At the end of the visit, [Petitioner] asked [M.S.] "What would you say if I asked you out for dinner. You could refer to me as a prospect." [Petitioner] then gave [M.S.] a card with his name, address, home, work and cell phone numbers on it. The information was printed on the card similar to a business card, but did not specify that [Petitioner] was a doctor and it did not mention the name of his employer.

Approximately two weeks later, in August 2003, Petitioner treated M.S. for a third time at the Medical Center.

During this visit, while they were alone in a patient room, [Petitioner] kissed [M.S.] and grabbed her breasts. [M.S.] could not remember if [Petitioner] had grabbed her breasts on the outside of her clothing or not. [Petitioner] also told [M.S.] that she was beautiful and that he wanted to see her. . . . Later that night, [M.S.] called [Petitioner] and they planned to meet each other outside of work at Starbucks located at the Camino Real Market Place Plaza. . . . [M.S.] said that before she was able to startup a conversation with [Petitioner], he told [her] "Let's go make-out." [M.S.] told [Petitioner] that he was awfully blunt, but then followed [him] to his vehicle, which was in the parking lot at the Camino Real Market Place Plaza.

While they sat in the backseat of his vehicle[,] still parked at the Market Place Plaza, [Petitioner and M.S.] kissed. [M.S.] was wearing a black tank top and [Petitioner] eventually lowered [M.S.]'s shirt below her breasts and kissed her breasts. [Petitioner] also touched [M.S.] in the vaginal area on the outside of her pants. [Petitioner] then unzipped his pants and pulled out his penis. [Petitioner] made comments to [M.S.] about how big and hard his penis was and how

wonderful it would make her feel. [M.S.] then saw [Petitioner] masturbate. [M.S.] believes [Petitioner] ejaculated because he placed her hand on his penis and it felt moist.

[¶]

A couple of weeks later [Petitioner] called and asked if she wanted to go out to dinner. [M.S.] told [Petitioner] that she was not looking for a sex buddy and he was moving too quickly.

(Exhibit 4, pp. AG00043-45.) Petitioner continued to telephone M.S., up to and including October 1, 2003, the day that she reported the incident to the Santa Barbara County Sheriff's Department.

5. At the hearing, Petitioner stated that M.S. was not the only patient with whom he had engaged in inappropriate sexual relations. Petitioner admitted that there were at least five other patients with whom he had inappropriate sexual contact. Petitioner also stated that during that time period he was employed at several locations, and that he engaged in this inappropriate contact with patients at multiple locations.

6. Petitioner has a history of drug and alcohol abuse. On June 6, 2000, the Ventura County Sheriff's Department arrested Petitioner, after they found him at his residence, under the influence of a controlled substance with injection marks on his body. His nurse had contacted law enforcement authorities and reported that Petitioner had come to work under the influence drugs. On February 22, 2001, Petitioner pled guilty to violating Health and Safety Code section 11550, subsection (a). The court sentenced Petitioner to 24 months of deferred entry of judgment, and required him to participate in drug rehabilitation. Petitioner thereafter voluntarily entered the Board's Diversion Program; however, on June 16, 2004, the Board terminated him from the Diversion Program for "reasons other than successful completion," i.e., the aforementioned sexual misconduct.

7. Petitioner expressed sincere remorse for his actions. He is actively involved in Alcoholics Anonymous, and he stated that in two months, he will have a total of 10 years of chemical sobriety. Petitioner does not currently attend any recovery program or receive any treatment for sexual issues, and he has not done so for approximately five years. Petitioner does not participate in any community activities other than recovery programs. He is divorced, and his wife has full custody of their three teenage children. The majority of his family lives in the Midwest. Petitioner does not have a local support system outside of Alcoholics Anonymous.

8. Petitioner is in compliance with the terms and conditions of the Stipulated Settlement and Disciplinary Order. His main reasons for petitioning to end his probation are

that first, it is financially difficult for him to obtain medical malpractice insurance. Second, Petitioner contended that it is hard to find a job because of the stigma of sexual misconduct. He has applied for and been rejected from over 200 jobs. Petitioner believes that he will have more opportunities to practice if his probation is terminated. In addition, Petitioner wants to practice medicine in a way that he thinks will serve the state of California; specifically, he would like to go into a practice of full-time substance abuse addictionology, and become a medical director of an in-patient rehabilitation facility for alcoholics and drug addicts. Petitioner has shared his experiences with students at California State Channel Island, and found it to be fulfilling, and it led to his desire to develop a career in addiction recovery.

9. Petitioner is currently employed full-time in Koreatown, practicing primarily geriatric medicine. His current employment is not an ideal practice because the management does not allow for solo practice; he has to follow procedures that he is not comfortable with; and he has to drive 50 miles each way to work. Petitioner stated that the main problems with his current employment are culture and language.

10. David E. Wood, a partner at Anderson Kill, wrote a letter and testified in support of the Petition. Mr. Wood has known Petitioner since 2000. He sponsors Petitioner in Alcoholics Anonymous (AA); they do not socialize or otherwise have contact outside of the sponsor-sponsee relationship. Mr. Wood described Petitioner as initially very hostile and verbally combative, and appeared to have joined AA to fulfill a requirement or otherwise make someone else happy. According to Mr. Wood, Petitioner re-dedicated himself to AA in 2004, and that is when Petitioner asked him to be his sponsor. Mr. Wood is honored and privileged to serve in that capacity. Mr. Wood thinks that Petitioner has accepted the consequences of his actions without feeling resentful. He believes that Petitioner would be a tremendous asset to the addiction community.

Mr. Wood has been involved in AA for 15 years. He has not had any counseling or programs or other training for chemical or sexual addiction. Mr. Wood did not know any of the details of Petitioner's sexual misconduct with his patients.

11. Petitioner submitted letters from Victor Contreras, M.D., and Sunmee Chung, M.D. Dr. Chung has known Petitioner since 2008. Dr. Contreras did not specify how long he has known Petitioner. Neither letter directly addressed Petitioner's sexual misconduct. The letters are cursory, and are given little weight to demonstrate Petitioner's rehabilitation.

12. Petitioner also submitted a letter from Reverend Father Gary Kyriacou, of St. Demetrios Greek Orthodox Church. Father Kyriacou has known Petitioner since March 2005. Petitioner attended mass at St. Demetrios until November 2007, when, according to Father Kyriacou, he left "to attend a church closer to where he works." Since Petitioner is dissatisfied with his long commute to work, it is curious why he would attend church in that area; the evidence did not explain this situation. Father Kyriacou's letter is based on approximately 1.5

years of knowing Petitioner, a small snapshot of Petitioner's lengthy history of drug and alcohol abuse, and sexual misconduct. Father Kyriacou has not had regular contact with Petitioner in over two years. The evidence did not establish that Father Kyriacou is aware of Petitioner's recent behavior and lifestyle. For the foregoing reasons, Father Kyriacou's letter is given little weight toward establishing Petitioner's rehabilitation.

13. Petitioner submitted a letter in support of his petition from his psychiatrist, Michael V. Stulberg, M.D., with whom he visits twice yearly. In addition, Milli Kelly, the clinical director of Alternative Action Programs, wrote a letter on Petitioner's behalf.

14. By reason of the foregoing, Petitioner has not established his rehabilitation, and continued probation is required for public protection.

### LEGAL CONCLUSIONS

Cause exists pursuant to Business and Professions Code section 2307 to deny Petitioner's Petition for Penalty Relief, by reason of factual finding numbers 1 through 14.

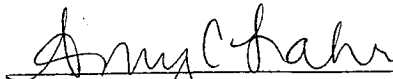
Petitioner has not demonstrated that he is sufficiently rehabilitated to justify early termination of his probation. Petitioner did not present evidence to show that he is sufficiently addressing his sexual misconduct issues, which was the basis for the underlying Accusation and Stipulated Settlement and Disciplinary Order. Although he is active in Alcoholics Anonymous to address his chemical addictions, Petitioner has received minimal treatment for his sexual misconduct behaviors. Additionally, only 3.5 years, or half of the agreed upon probation period, has passed. Petitioner's compliance with his probation terms during that time period is commendable, but not by itself cause to terminate the remaining probationary period. Since people have a strong incentive to obey the law while under supervision, little weight is placed on the fact that Petitioner has engaged in good behavior while on probation. (See, *In re Gossage* (2000) 23 Cal.4th 1080.) Other than service work for Alcoholics Anonymous, Petitioner is not involved in any community service. Petitioner's support system exists solely through his recovery program. Petitioner's addictions are serious, and his history of misconduct was egregious, in that a patient disclosed that she had been a victim of incest and Petitioner crossed the boundary of doctor-patient relationship; he needs many sources of accountability and support to ensure that such conduct will not reoccur. Further, Petitioner's motivation for probation termination is questionable. On the one hand, he claims to desire becoming an addiction specialist; but he stated his primary reasons for petitioning for probation termination are that he wants affordable malpractice insurance and more job options.

In sum, Petitioner has not demonstrated rehabilitation, and continued probation is necessary for the public's protection.

ORDER

Petitioner Ralph Napolitano's Petition for Penalty Relief is denied.

Dated: April 28, 2010

  
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AMY C. LAHR  
Administrative Law Judge  
Office of Administrative Hearings